114-52

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 856.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

CHARLES W. IDE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JUNE 6, 1884.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the entry of an order remanding to the supreme court of the State of New York a suit which is in the said circuit court, before you, or some of you, between Charles W. Ide, as plaintiff, and the Louisville and Nashville Railroad Company, impleaded with others, as defendants, a manifest error hath happened, to the great damage of the said defendant, The Louisville and Nashville Railroad Company, as is said and as appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if such order be therein entered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the seventh of June next, that the record and proceedings aforesaid being inspected the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of May, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Allowed May 8th, 1884.
WM. J. WALLACE.

2 UNITED STATES OF AMERICA, }
Southern District of New York } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to seventy-two, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of The Louisville and Nashville Railroad Company, impleaded with others, plaintiff in error, against Charles W. Ide, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this second day of June, in the

year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

U. S. circuit court. Filed May 13, 1884.

TIMOTHY GRIFFITH, *Clerk.*

3 *Summons.*

Supreme Court, County of New York.

CHARLES W. IDE, Plaintiff,

against

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE CLEVELAND, COLUMBUS, CINCINNATI AND INDIANAPOLIS RAILROAD COMPANY, THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, THE BOSTON AND MAINE RAILROAD COMPANY, THE EASTERN RAILROAD COMPANY, AND THE WORCESTER AND NASHUA RAILROAD COMPANY, Defendants.

To the above-named defendants and each of them:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you for the relief demanded in the complaint.

Dated New York, November 14, 1883.

AUSTEN G. FOX,
Plaintiff's Attorney.

P. O. Address: No. 69 Wall St., New York City.

4 Supreme Court, County of New York.

CHARLES W. IDE, Plaintiff,

against

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE CLEVELAND, COLUMBUS, CINCINNATI & INDIANAPOLIS RAILROAD COMPANY, THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE BOSTON & MAINE RAILROAD COMPANY, THE EASTERN RAILROAD COMPANY, AND THE WORCESTER & NASHUA RAILROAD COMPANY, Defendants.

The plaintiff, by Austin G. Fox, his attorney, complains of the defendants, and respectfully shows to the court, on information and belief,

For a First Cause of Action,

I. That at the times hereinafter mentioned The Cocheco Manufacturing Company was, and still is, a corporation duly organized under the laws of the State of New Hampshire, for the purpose of carrying on business of manufacturing cotton cloth, and was en-

gaged in carrying on said business at Dover, in the State of New Hampshire.

5 II. That the Louisville & Nashville Railroad Company at the times hereinafter mentioned was, and still is, a corporation duly organized under the laws of the State of Kentucky, engaged in operating a railroad from Cincinnati, in the State of Ohio, to or near Columbus, in the State of Mississippi, and other places.

III. That the Cleveland, Columbus, Cincinnati & Indianapolis Railroad Company at the times hereinafter mentioned was, and still is, a foreign corporation, duly organized under the laws of the State of Ohio, engaged in operating a railroad from Cincinnati, in the State of Ohio, to Cleveland, in said State, and other places.

IV. That the Lake Shore & Michigan Southern Railroad Company at the times hereinafter mentioned was, and still is, a foreign corporation, duly organized under the laws of the State of Ohio, engaged in operating a railroad from Cleveland, in the State of Ohio, to Buffalo, in the State of New York, and other places.

V. That the New York Central & Hudson River Railroad Company at the times hereinafter mentioned was, and still is, a corporation, duly organized under the laws of the State of New York, engaged in operating a railroad from Buffalo to Albany and other places in said State.

VI. That the Boston and Albany Railroad Company at the times hereinafter mentioned was, and still is, a foreign corporation, duly organized under the laws of the State of Massachusetts, engaged in operating a railroad from Albany, in the State of New York, to Boston, in the State of Massachusetts, and other places.

6 VII. That the Boston and Maine Railroad Company at the times hereinafter mentioned was, and still is, a corporation, duly organized under the laws of the State of Massachusetts, engaged in operating a railroad from Boston, in the State of Massachusetts, to Dover and Manchester, both in the State of New Hampshire, and to other places.

VIII. That the Eastern Railroad Company at the times hereinafter mentioned was, and still is, a foreign corporation, duly organized under the laws of the State of Massachusetts, engaged in operating a railroad from Boston aforesaid to Dover and Manchester aforesaid, and other places.

IX. That the Worcester & Nashua Railroad Company, at the times hereinafter mentioned was, and still is, a foreign corporation, duly organized under the laws of the State of Massachusetts, engaged in operating a railroad from Worcester, in the State of Massachusetts, to Nashua, in the State of New Hampshire, and other places.

X. That heretofore the defendants, and such common carriers, associated themselves together for the transportation, jointly, of goods from places on or near the Mississippi river to places on or near the Atlantic coast, and among others from Columbus, in the State of Mississipi, to Dover and Manchester aforesaid, without change of cars, and held themselves out as common carriers, engaged jointly in the business of such transportation, and at the

times hereafter mentioned they carried on said business under the name of the "White Line Central Transit Company."

XI. That while so associated together and on or about the fifth day of January, 1882, the defendants, at Columbus aforesaid,
7 received of certain persons doing business there under the firm name of Green & Company two hundred bales of cotton, which, in consideration of a certain rate of freight to be paid therefor by the said The Cocheco Manufacturing Company, the defendants agreed, jointly, to transport and deliver to the said The Cocheco Manufacturing Company at Dover aforesaid, and it thereupon became the duty of the defendants to transport, and within a reasonable time thereafter to deliver, said cotton as aforesaid.

XII. That on or about the fifth day of January, 1882, at Columbus aforesaid, and at or about the time of the delivery to the defendants of the said two hundred bales of cotton for transportation over their lines of railroad as aforesaid, the defendants executed and delivered to the said persons doing business under the name of Green & Company a bill of lading whereby the defendants acknowledged the receipt of said cotton of the said Green & Company to be transported over the line of the defendants, as aforesaid, and delivered to the consignee therein named, that is to say, the said The Cocheco Manufacturing Company, at Dover, as aforesaid.

XII. That the said persons doing business under the said name of Green & Company thereupon duly endorsed the said bill of lading and attached it to a draft drawn by them on H. Stockton as treasurer of the said The Cocheco Manufacturing Company, dated at Columbus as aforesaid, on the fifth day of January, 1882, in favor of William H. Lee, cashier, for the sum of ten thousand eight hundred and ninety-four dollars and ninety cents, payable at sight.

XIV. That on or about the 13th day of January, 1882, the said draft, endorsed with the said bill of lading attached, was pre-
8 sented for payment to the said The Cocheco Manufacturing Company, and relying entirely upon the said bill of lading and the statements and promises therein contained, The Cocheco Manufacturing Company received the said bill of lading and accepted and paid said draft.

XV. That the said cotton was of the value of the sum of money last above named.

XVI. That the defendants have failed to deliver any part of the said cotton to the said The Cocheco Manufacturing Company, or otherwise.

XVII. That before the commencement of this action, and on or about the 18th day December, 1882, the said The Cocheco Manufacturing Company duly assigned to the plaintiff all claim which it had against the defendants, or any of them, for damages for the failure and neglect of the defendants to deliver the said cotton, or by reason of the issuing of the said bill of lading or otherwise, and the plaintiff is now the holder and owner of said claim.

For a Second Cause of Action.

XVIII. The plaintiff repeats each of the allegations contained in

each of the paragraphs of this complaint, numbered II to X, both inclusive.

XIX. The plaintiff further avers on information and belief that at the times above mentioned The Amoskeag Manufacturing Company was a corporation duly organized under the laws of the State of New Hampshire for the purpose of carrying on the business of manufacturing cotton cloth, and was engaged in carrying on said business at Manchester, in the State of New Hampshire.

9 XX. That while so associated together the defendants, at Columbus aforesaid, between the 25th day of October, 1881, the 19th day of November, 1881, both inclusive, received of certain persons doing business there under the firm name of Green & Company fifteen hundred bales of cotton, the dates of the receipt thereof, and the amounts of cotton so received being set forth in Schedule A annexed hereto and made a part hereof, and in consideration of a certain rate of freight to be paid on delivery thereof, the defendants agreed to transport and deliver the said cotton to the said The Amoskeag Manufacturing Company, at Manchester aforesaid, and it thereupon became the duty of the defendants to transport, and within a reasonable time thereafter to deliver, the said cotton as aforesaid.

XXI. That at or about the time of the receipt of the said each of several lots of cotton by the defendants as aforesaid they executed and delivered to the said persons doing business under the name of Green & Company a bill of lading, said bills of lading being dated respectively October 25, October 26, October 29, November 2, November 14, November 16, and November 19, all in the year 1881, whereby they acknowledged the receipt of the said cotton in the amounts, and with the marks as set forth in Schedule A, annexed hereto and made a part hereof.

XXII. That the defendants in and by each of the said bills of lading acknowledged the receipt of the cotton therein named of the said persons doing business under the name of Green & Company to be transported over the line of the defendants as aforesaid, and delivered to the consignee therein named, that is to say, the said The Amoskeag Manufacturing Company, at Manchester aforesaid.

10 XXIII. That at or about the time of the receipt of each of the said several lots of cotton by the defendants, and the execution and delivery of each of the said several bills of lading, the said Green & Company drew a draft, said drafts being dated at Columbus aforesaid, and each of said drafts being drawn on Channing Clapp, as treasurer of the said The Amoskeag Manufacturing Company, payable at sight, the said drafts being dated on the days and for the amounts and in favor of the payees set forth and named in Schedule B, hereto annexed and made a part hereof, and being drawn for sums of money which in the aggregate amounted to the sum of eighty-three thousand six hundred and eighty-one dollars and thirty-five cents.

XXIV. That at or about the time of the execution and delivery of each of said bills of lading the said Green & Company endorsed

each of said bills of lading and attached it to one of the said drafts, bearing date the same day as the bill of lading thereto attached.

XXV. That thereafter and between the first and the twenty-fifth days of November, 1881, both inclusive, each of the said drafts, with the bill of lading attached as aforesaid thereto, was presented for payment to the said The Amoskeag Manufacturing Company, and relying entirely upon the said bills of lading and the statements and promises therein contained, the said The Amoskeag Manufacturing Company received the said bills of lading and paid the said drafts.

XXVI. That the said fifteen hundred bales of cotton were of the value of eighty-three thousand six hundred and eighty-one dollars and thirty-five cents; but the defendants have delivered to the said
11 The Amoskeag Manufacturing Company only twelve hundred and forty-five bales, of the value of sixty-nine thousand three hundred and forty-three dollars and ninety-seven cents, and have failed to deliver to the said The Amoskeag Manufacturing Company, or otherwise, the remaining two hundred and fifty-five of said bales, of the value of fourteen thousand three hundred and thirty-seven dollars and thirty-eight cents.

XXVII. That before the commencement of this action and on or about the 14th day of December, 1881, the said The Amoskeag Manufacturing Company duly assigned to the plaintiff all claim which it had against the defendants, or any of them, for damages for failure and neglect of the defendants to deliver the said two hundred and fifty-five bales of cotton or by reason of the issuing of the said bill of lading or otherwise, and the plaintiff is now the owner and holder of the said claim.

Wherefore the plaintiff demands judgment against the defendants for the sum of twenty-five thousand two hundred and thirty-two dollars and twenty-eight cents, with interest on ten thousand eight hundred and ninety-four dollars and ninety cents from the 13th day of January, 1882, and with interest on fourteen thousand three hundred and thirty-seven dollars and thirty-eight cents from the 25th day of November, 1881.

New York, Nov. 14, 1883.

AUSTEN G. FOX,
Plaintiff's Attorney.

Office and post-office address, No. 69 Wall street, New York city.

CITY AND COUNTY OF NEW YORK, *ss:*

Charles W. Ide, being duly sworn, says: That he is the plaintiff in the above-entitled action; that the foregoing complaint is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

CHARLES W. IDE.

Sworn to before me, this 13th day of November, 1883.

JAS. J. CONNER,
Commissioner of Deeds, New York City.

12 SCHEDULE A.

	Dated.	No. of bales,	Mark on cotton.
Bill of lading—	Oct. 25, 1881	300	a on C. H. G 125 bales. c on C. H. G. 175 bales.
" "	Oct. 26, 1881	300	a on C. H. G. 100 bales. B on C. H. G. 100 bales. c on C. H. G. 100 bales.
" "	Oct. 29, 1881	200	B on C. H. G. 200 bales.
" "	Nov. 2, 1881	200	c on C. H. G. 32 bales. B on C. H. G. 168 bales.
" "	Nov. 14, 1881	250	a on C. H. G. 100 bales. B on C. H. G. 100 bales. C on C. H. G. 500 bales.
" "	Nov. 16, 1881	100	a on C. H. G. 50 bales. B on C. H. G. 50 bales.
" "	Nov. 19, 1881	150	B on C. H. G. 50 bales. C on C. H. G. 50 bales.
		1,500	

SCHEDULE B.

Date of draft.	Payee.	Amount.
Oct. 25, 1881	W. H. Lee, cashier	$16,300 00
" 26, 1881	Gattman & Co.	16,800 00
" 29, 1881	W. H. Lee, cashier	10,977 92
" 2, 1881	W. H. Lee, cashier	11,169 20
" 14, 1881	Gattman & Co.	13,850 00
" 16, 1881	W. H. Lee, cashier	6,503 71
" 19, 1881	W. H. Lee, cashier	8,130 52
		$83,681 85

13 [Endorsed:] Supreme court. Charles W. Ide *against* The Louisville and Nashville Railroad Company and others. Copy of summons and complaint. Austin G. Fox, plaintiff's attor-

ney, 69 Wall St. Motion to remand is granted. Ap'l 5, 1884. Wm. J. Wallace. U. S. circuit court. Filed Ap'l 7th, 1884. Timothy Griffith, clerk.

Time of the defendant, The Louisville & Nashville R. R. Co., to demur or answer the within complaint is hereby extended twenty days from date.

Dated New York, December 1st, 1883.

AUSTEN G. FOX,
Pl'ff's Att'y.

Further extended twenty days from date.
N. Y. Dec. 20, 1883.

AUSTEN G. FOX.

14 *Petition for Removal.*

Supreme Court, City and County of New York.

CHARLES W. IDE
against
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Maine Railroad Company, the Eastern Railroad Company, and The Worcester and Nashua Railroad Company.

To the honorable the justices of the supreme court of the State of New York:

The petition of the Louisville and Nashville Railroad Company, one of the above-named defendants, respectfully shows:

That the above suit is a suit of a civil nature at law, and was commenced on the fifteenth day of November, 1883, by Charles W. Ide, as plaintiff, against your petitioner, as defendant, by the service of a summons and copy of the complaint on your
15 petitioner. That the summons and a copy of the complaint have also been served upon defendant, The New York Central and Hudson River Railroad Company. That your petitioner is informed and believes that none other of the corporations named in the summons have been served.

That the time of each of the two defendants served as aforesaid to demur or answer the complaint has been extended by stipulation until the 9th day of January, 1884, and has not yet expired. That your petitioner has not yet answered or demurred to the said complaint, and that no other proceedings have as yet been taken in the suit.

And your petitioner further says that Charles W. Ide, the plaintiff, was, at the commencement of said suit, and at all times since has been, and now is, a citizen of the State of New York, and resides at the city of Brooklyn, in said State of New York; that your petitioner, The Louisville and Nashville Railroad Company, was, at the commencement of said suit, and at all times since has been, and now is, a corporation duly incorporated under the laws of the

State of Kentucky, owning, controlling, and managing a railroad in said State, and a citizen of said State of Kentucky.

And your petitioner further shows that the said suit is brought to recover damages against the defendants for the non-delivery
16 of certain goods alleged to have been delivered to defendants as common carriers associated together for the transportation of goods from places on or near the Mississippi river to places on or near the Atlantic coast, and carrying on said business under the name of "The White Line Central Transit Company," and for which bills of lading were issued by the said White Line Central Transit Company to the assignor of the plaintiff herein.

And your petitioner further shows that said White Line Central Transit Company was not at the times mentioned in the complaint, and is not now, and never has been, a corporation, or an incorporated association, but that a number of incorporated railroad companies, including the defendants named in the summons in the above-entitled suit, and others not named therein, before the times mentioned in the complaint, entered into an agreement, which was in full force and effect at all the times mentioned in the complaint, for the purpose of forming a fast freight line between cities in the eastern and in the western part of the country, fixing uniform rates of transportation and regulating the necessary incidents to said business, which was to be carried on under the name of "The Central Transit Company," and which afterwards was familiarly known as the "White Line."

17 And your petitioner further shows that in and by said agreement it was provided that goods shipped over said lines should be carried in certain cars, a specified number of which should be set aside by each of said companies to be used exclusively for through freight and not for local business; such cars to be marked with the initial letters of the particular company owning them, and also designated as forming part of said fast freight line.

That the mileage charges of each particular company for cars of the line belonging to other companies passing over its road, the share of each company in the freight earned on any shipment, and its share in the expenses of the line should be adjusted monthly through the superintendent of the said transit company; and that the expenses should be shared by the various companies in proportion to the amount earned by each from shipment by said fast freight line. And said agreement further provided that the freight received on goods so carried should be divided between the various companies in proportion to the distance such goods should be carried on the road of each of said companies respectively; that each company should pay for any damages or loss occurring on its road, and if such damage or loss could not be located, it should be prorated between the companies forming the route over which the property would have passed to its destination in the same ratios as
18 the freight moneys.

And your petitioner further shows that agents of the said several corporations have issued bills of lading in the name of said "The Central Transit Company" with respect to goods delivered to

the said several corporations at various points throughout the country, to be transmitted by the said fast freight line, among which it is alleged are the bills of lading mentioned in the complaint in this suit, in all of which bills of lading so issued it was expressly stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by the property therein receipted for, that company alone should be held answerable therefor in whose actual custody the same might be at the time of the happening thereof.

And your petitioner further says that there is in said above-entitled suit a controversy which is wholly between citizens of different States, to wit, a controversy between Charles W. Ide, the plaintiff in said suit, a citizen of the State of New York, and your petitioner, the said Louisville and Nashville Railroad Company, a citizen of the State of Kentucky, and which can be fully determined as between them without the presence of any of the other persons or bodies corporate made parties to said suit.

19 And your petitioner further shows that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, the said suit being brought to recover the sum of fourteen thousand dollars and upwards.

And your petitioner further shows that the said suit is not yet ready for trial—not yet being at issue, and that the same could not be tried at the present term; that no trial has been had, and that it is desired by your petitioner to remove the said suit from the supreme court of the State of New York to the circuit court of the United States for the southern district of New York, according to the acts of Congress in that behalf, and that said defendant presents herewith a bond with good and sufficient surety for its entering in such circuit court on the first day of its next term or session a copy of the record in such suit, and for paying all costs that may be awarded by said circuit court if such court shall hold that such suit was wrongfully or improperly removed thereto, and also for its appearing and entering special bail if special bail was originally required therein.

And your petitioner further offers to furnish such other or further security, or do such other or further act or both, as may reasonably be required in the premises.

20 Wherefore your petitioner, pursuant to the provisions of the act of Congress in that behalf and the statutes of the United States, prays this honorable court to accept this petition and the said bond, and to proceed no further in this suit, and that the same may be removed from the said supreme court of the State of New York to the circuit court of the United States for the southern district of New York, and that your petitioner may have such other or further relief, or both, as may be just and equitable.

And your petitioner will ever pray, &c.

Dated New York, January 8th, 1884.

STRONG & CADWALADER,

Attorney for Defendant, The Louisv. & Nashv. R. R. Co., Petitioner.

Office and P. O. address: No. 68 Wall street, New York city, N. Y.

STATE OF NEW YORK, }
City and County of New York, } ss:

Christopher C. Baldwin, of said city, being duly sworn, doth depose and say: That he is president of the Louisville and Nashville Railroad Company, the petitioner and one of the defendants in the above-entitled action; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own
21 knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. C. BALDWIN.

Sworn to before me, this 8th day of January, 1884.

A. W. ANDREWS,
Notary Public (20), *N. Y. C. & Co.*

(Endorsed:) Supreme court. Charles W. Ide *vs.* The Louisville and Nashville Railroad Company, impleaded with others. Copy. Petition for removal. Strong & Cadwalader, attorneys for the Louisv. & Nashv. R. R. Co., defendant & petitioner. Office and P. O. address: No. 68 Wall St., New York city.

22 Know all men by these presents, that we, The Louisville and Nashville Railroad Company, a corporation duly incorporated under the laws of the State of Kentucky, as principal, and Christopher C. Baldwin, of the city of New York, and Jacob S. Rogers, of the same place, as sureties, obligors, are held and firmly bound unto Charles W. Ide in the sum of one thousand dollars, to be paid to the said Charles W. Ide, his executors, administrators, and assigns; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals. Dated New York, January 8th, 1884.

Whereas the above-bounden The Louisville and Nashville Railroad Company has petitioned, or is about to petition, the supreme court of the State of New York for the removal to the circuit court of the United States for the southern district of New York, pursuant to the provisions of the statutes of the United States in that behalf, of a certain suit pending in the said supreme court, wherein the said Charles W. Ide is named as plaintiff and The Louisville and Nashville Railroad Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Maine Railroad Company, The Eastern Railroad Company, and The Worcester and Nashua Railroad Company are named as defendants:

23 Now, therefore, the condition of the above obligation is such, that if the above-bounden The Louisville and Nashville Railroad Company shall enter in said circuit court on the first day of its next session a copy of the record in such suit, and shall pay all the costs that may be awarded by the said circuit court if such

court shall hold that said suit was wrongfully or improperly removed thereto, and shall there appear and enter special bail in said suit if special bail was originally requisite therein, then this obligation to be null and void; otherwise, to remain in full force and effect.

C. C. BALDWIN, *Pres'd't.* [SEAL.]
J. S. ROGERS. [SEAL.]
C. C. BALDWIN. [SEAL.]

Sealed and delivered in the presence of—
A. W. ANDREWS.

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that, on this eighth day of January, A. D. 1884, before me personally appeared the above-named Jacob S. Rogers and Christopher C. Baldwin, to me personally known, and known to me to be the individual described in and who executed the above bond, and severally acknowledged that they executed the same. And on said last-mentioned date also before me personally came Christopher C. Baldwin, to me personally known, who, being by me duly sworn, did depose and say that he is the president of the Louisville and Nashville Railroad Company, the corporation described in and which executed the foregoing instrument; that he resides in the city of New York; that he knows the corporate seal of said corporation, and that the seal which is affixed thereto is such corporate seal,
24 and that it was affixed by authority of said corporation, and that he signed his name thereto by like authority as president as aforesaid.

A. W. ANDREWS,
Notary Public (20), *N. Y. C. & Co.*

CITY AND COUNTY OF NEW YORK, *ss:*

Christopher C. Baldwin, one of the subscribers to the foregoing bond, being duly sworn, says: That he is a resident and freeholder within this State, and is worth the sum of two thousand dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

C. C. BALDWIN.

Sworn to before me, this 8th day of January, 1884.
A. W. ANDREWS (20),
Notary Public in and for City and County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Jacob S. Rogers, one of the subscribers to the foregoing bond, being duly sworn, says: That he is a resident and freeholder within this State, and is worth the sum of two thousand dollars over all the debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

J. S. ROGERS.

Sworn to before me, this 8th day of January, 1884.
A. W. ANDREWS (20),
Notary Public in and for City and County of New York.

25 [Endorsed:] Supreme court, city and county of New York. Charles W. Ide *vs.* The Louisville and Nashville Railroad Company, impleaded with others. Copy. Bond. Strong & Cadwalader, attorneys for petitioners, The Louisv. & Nashv. Railroad Company, defendant, No. 68 Wall street, New York city.

26 Know all men by these presents, that we, The Louisville and Nashville Railroad Company, a corporation duly incorporated under the laws of the State of Kentucky, as principal, and Christopher C. Baldwin, of the city of New York, and Jacob S. Rogers, of said city, as sureties, obligors, are held and firmly bound unto Charles W. Ide in the sum of one thousand dollars, to be paid to the said Charles W. Ide, his executors, administrators, successors, and assigns; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents. Sealed with our seals. Dated New York, February 12th, 1884.

Whereas the above-bounden The Louisville and Nashville Railroad Company has petitioned, or is about to petition, the supreme court of the State of New York for the removal to the circuit court of the United States for the southern district of New York, pursuant to the provisions of the statutes of the United States in that behalf, of a certain suit pending in said supreme court, wherein the said Charles W. Ide is named as plaintiff and The Louisville and Nashville Railroad Company, The Cleveland, Columbus, Cincinnati, and Indianapolis Railroad Company, The Lake Shore and
27 Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Maine Railroad Company, The Eastern Railroad Company, and The Worcester and Nashua Railroad Company are named as defendants:

Now, therefore, the condition of the above obligation is such, that if the above bounden The Louisville and Nashville Railroad Company shall enter in said circuit court on the first day of its next session a copy of the record in such suit, and shall pay all the costs that may be awarded by the said circuit court if such court shall hold that said suit was wrongfully or improperly removed thereto, and shall there appear and enter special bail in said suit if special bail was originally requisite therein, then this obligation to be null and void; otherwise, to remain in full force and effect.

LOUISVILLE AND NASHVILLE RAILROAD CO.,
[SEAL.] By C. C. BALDWIN, *President.*
C. C. BALDWIN. [L. S.]
J. S. ROGERS. [L. S.]

Sealed and delivered in the presence of—
A. W. ANDREWS.

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that on this twelfth day of February, A. D. 1884, before me personally appeared the above-named Christopher C.
28 Baldwin and Jacob S. Rogers, both to me personally known, and known to me to be the individuals described in and who executed the above bond, and severally acknowledged that they executed the same. And on said last-mentioned date also before me personally came Christopher C. Baldwin, to me personally known, who, being by me duly sworn, did depose and say that he is the president of the Louisville and Nashville Railroad Company, the corporation described in and which executed the foregoing instrument; that he resides in the city of New York; that he knows the corporate seal of said corporation, and that the seal which is affixed thereto is such corporate seal, and that it was affixed by authority of said corporation, and that he signed his name thereto by like authority as president as aforessaid.

[L. S.]

A. W. ANDREWS,
Notary Public (20), *N. Y., C. & Co.*

29 CITY AND COUNTY OF NEW YORK, *ss:*

Christopher C. Baldwin, one of the subscribers to the foregoing bond, being duly sworn, says: That he is a resident and freeholder within this State, and is worth the sum of two thousand dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

C. C. BALDWIN.

Sworn to before me, this twelfth day of February, 1884.

A. W. ANDREWS (20),
Notary Public in and for City and County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Jacob S. Rogers, one of the subscribers to the foregoing bond, being duly sworn, says: That he is a resident and freeholder within this State, and is worth the sum of two thousand dollars over all the debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

J. S. ROGERS.

Sworn to before me, this twelfth day of Feb'y, 1884.

A. W. ANDREWS (20),
Notary Public in and for City and County of New York.

30 [Endorsed:] Supreme court, State of New York. Charles W. Ide *vs.* The Louisville and Nashville Railroad Company, impleaded with others. Copy. Bond. Strong & Cadwallader, attorneys for petitioners & The Louisv. & Nashville R. R. Co., 68 Wall St., New York city.

31 Supreme Court.

CHARLES W. IDE

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD CO. *et al.*

CITY AND COUNTY OF NEW YORK, *ss:*

George W. Wickenham, being duly affirmed, says: He is managing clerk in the office of Strong and Cadwallader, attorneys for defendant, The Louisville and Nashville Railroad Company, the petitioners for removal of this cause to the U. S. circuit court; that no previous application has been made for an order of removal of said cause to any court or judge.

GEO. W. WICKENHAM.

Affirmed to before me, this 9th day of January, 1884.

JAMES L. McNEERNEY,
Notary Public, N. Y. C.

32 [Endorsed:] Supreme court. Charles W. Ide *vs.* Louisv. & Nash. R. R. Co. *et al.* Affidavit. Strong & Cadwallader, def't's att'ys, 68 Wall st., N. Y. Filed Jan'y 30, 1884.

33 Supreme Court, City and County of New York.

CHARLES W. IDE

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, impleaded with others.

Upon the complaint herein, and the verified petition of the Louisville and Nashville Railroad Company, one of the defendants, and the bond of said company, with sureties, and the affidavit of John L. Cadwallader, verified the 9th day of January, 1884, and on motion of Strong and Cadwallader, attorneys for said defendant—

It is ordered that the plaintiff and defendant, The New York Central and Hudson River Railroad Company, or their attorneys, show cause before this court, at a special term thereof, to be held in the court-house, in the city of New York, on Monday, the 14th day of January, 1884, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why this suit should not be removed into the circuit court of the United States, to be held in the
34 southern district of New York, the district in which said suit is pending, and an order entered directing such removal, and that said defendant may have such other or further relief as may be just.

And until the hearing and determination of this motion, and two days thereafter, let all proceedings in this action be stayed, and let the time of defendant, The Louisville and Nashville Railroad Company, to answer the complaint herein be extended until the hearing and determination of this motion, and ten days thereafter.

And sufficient cause therefor appearing to me from the said affi-

davit of John L. Cadwallader, service of a copy of this order upon the plaintiff and the New York Central and Hudson River Railroad Company, or their attorneys, on or before the 10th day of January, 1884, shall be deemed sufficient notice of motion.

Dated N. Y., January 9th, 1884.

GEO. C. BARRETT, *J. S. C.*

35 Supreme Court.

CHARLES W. IDE

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY *et al.*

CITY AND COUNTY OF NEW YORK, *ss:*

John L. Cadwalader, being duly sworn, says: He is a member of the firm of Strong and Cadwalader, attorneys for the Louisville and Nashville Railroad Company, one of the defendants in the above-entitled action.

The action was commenced by the service upon said defendant of the summons and a copy of the complaint on Nov'r 15th, 1883; the time of said defendant to answer has been extended by stipulation until January 9th, 1884, and expires on that day.

And deponent is informed and believes that none of the defendants named in the summons have been served except the Louisville and Nashville Railroad Company and the New York Central and Hudson River Railroad Company, and that the latter company defendant has not yet answered the complaint herein.

From a statement of the case in this action made to depo-
36 nent by defendant, The Louisville and Nashville Railroad Company, deponent verily believes that said defendant has a good and substantial defence upon the merits to the cause of action set forth in the complaint or to some part thereof.

No previous application has been made for the order to show cause here asked to any court or judge.

JOHN L. CADWALLADER.

Sworn to before me, this 9th day of January, 1884.

A. W. ANDREWS,
Notary Public (20), *N. Y. C. & Co.*

37 [Endorsed:] Supreme court. Charles W. Ide *vs.* The Louisville and Nashville Railroad Company *et al.* Affidavit of John L. Cadwallader. Strong & Cadwallader, att'ys for above def't; office & P. O. address, No. 86 Wall St., New York city. Filed Jan'y 30th, 1884.

38 At a special term of the supreme court, held at the chambers thereof, in the county court-house in the city of New York, on the 31st day of January, 1884.

Present: Honorable George C. Barrett.

CHARLES W. IDE
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE NEW York Central and Hudson River Railroad Company, impleaded, with others.

An order having been granted by Mr. Justice Barrett, dated the 9th day of January, 1884, requiring the plaintiff and the defendant, The New York Central and Hudson River Railroad Company, to show cause why an order should not be granted removing this cause to the circuit court of the United States for the southern district of New York, and the same having come on to be heard: Now, on reading and filing the said order to show cause, a copy of the
39 complaint herein, and the petition of the defendant, The Louisville and Nashville Railroad Company, dated the 18th day of January, 1884, and the bond of the said defendant, with sureties, dated the same day, and the affidavit of John L. Cadwallader, verified the same day, being the papers upon which the said order to show cause was granted, and, after hearing Mr. Cadwallader for the motion, and Mr. Fox in opposition thereto, on motion of Austen G. Fox, Esq., attorney for plaintiff, it is—

Ordered that the said motion be, and the same hereby is, denied, with ten dollars costs, to abide the event of the action, but that defendant, The Louisville and Nashville Railroad Company, have leave to renew the motion after the service of its answer upon the plaintiff's attorney.

40 [Endorsed:] Supreme court, city and county of New York. Charles W. Ide *vs.* The Louisville and Nashville Railroad Company *et al.* Order denying motion. Austen G. Fox, plaintiff's attorney, 69 Wall street, New York city.

41 *Answer.*

Supreme Court.

CHARLES W. IDE
against
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, impleaded with others.

The Louisville and Nashville Railroad Company, one of the abovenamed defendants, for separate answer to the complaint herein, by Strong and Cadwalader, its attorneys, respectfully alleges:

I. This defendant denies each and every allegation in said complaint contained, except as hereinafter specifically admitted.

II. For answer to the first cause of action in said complaint contained this defendant admits that at the times mentioned in the complaint it was, and still is, a corporation organized under the laws of the State of Kentucky, owning and engaged in operating a railroad from Louisville, in the State of Kentucky, to Nashville, in the State of Tennessee; and which also controls and operates other railroads between other points in the Southern States.

III. This defendant also admits that the Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Maine Railroad Company, The Eastern Railroad Company, and the Worcester and Nashua Railroad Company were at the times stated in the complaint, and now are, corporations organized and existing
42 respectively under and by virtue of the laws of the States respectively named in the paragraphs of the complaint numbered II, III, IV, VI, VII, VIII, and IX, and engaged in business as common carriers, but whether such corporations are engaged in operating railroads from and to the particular points in the complaint named defendant has no knowledge or information sufficient to form a belief, and leaves the plaintiff to prove the same.

IV. This defendant, further answering the complaint, denies that the defendants in said complaint named as common carriers associated themselves together for the transportation jointly of goods from places on or near the Mississippi river to places on or near the Atlantic coast, or from Columbus to Dover and Manchester, as alleged in paragraph X of the complaint, or held themselves out as common carriers engaged jointly in the business of such transportation, and that they carried on such business under the name of the "White Line," but the defendant alleges, that before the times mentioned in the complaint a number of incorporated railroad companies, including the defendants named in the summons in this action, and others not named therein, entered into an agreement, which was in force at the times mentioned in the complaint, to carry on a fast freight line between cities in the eastern and in the western parts of the country, fixing uniform rates of transportation and regulating the necessary incidents to said business, which business it was agreed should be carried on under the name of "The Central Transit Company," and which company afterwards became familiarly known as the "White Line," which is called in the
43 complaint "The White Line Central Transit Company."

And defendant further alleges that in and by said agreement it was provided that goods shipped over said line should be carried in certain cars, a specified number of which should be set aside by each of said companies to be used exclusively for through freight and not for local business; such cars to be marked with the initial letters of the particular company owning them, and also designated as forming part of said fast freight line; that the mileage charges of each particular company for cars of the line belonging to other companies passing over its road, the share of each company in the freight earned on any shipment, and its share in the expenses of the line should be adjusted monthly through the superintendent of the said transit company, and the expenses should be shared by the various companies in proportion to the amount earned by each from shipments by said fast freight line. And said agreement further provided that the freight received on goods so carried should be divided between the various companies in proportion to the distance such goods should be carried on the road of each of said companies

respectively; that each company should pay for any damage or loss occurring on its road, and if such damage could not be located, it should be prorated between the companies forming the route over which the property would have passed to its destination in the same ratios as the freight monies.

And this defendant further alleges that when goods were delivered to any one of the said companies to be transported by said fast freight line, bills of lading therefor were issued in the
44 name of "The Central Transit Company," "White Line" by an agent of such transit company, who, in his representative capacity, acted separately for each, and who was not authorized to act for such companies jointly; and that in all of such bills of lading so issued it was expressly stipulated and agreed that in case of any loss, detriment, or damage done to or sustained by the property therein receipted for, that company alone should be held answerable therefor in whose actual custody the same might be at the time of the happening thereof.

V. And this defendant denies that the defendants above named, associated together as set forth in paragraph X of the complaint, did, on or about the 5th day of January, 1882, at Columbus, in the State of Mississippi, receive of persons doing business there under the name of Green & Co. two hundred bales of cotton, or any other amount of cotton, or that the said defendants agreed jointly to transport and deliver any cotton whatever to the Cocheco Manufacturing Company at Dover, in the State of New Hampshire, or that the defendants executed and delivered any bill of lading to said persons doing business under the name of Green & Co. as alleged in the complaint; and also denies that this defendant individually received on said date, at such place, from such persons, any amount of cotton, or that it agreed separately to transport and deliver any such to said Cocheco Manufacturing Company at said place; or separately executed and delivered to same Green & Co. a bill of lading for any such goods.

VI. And this defendant, further answering upon information and
45 belief, says that if any bill of lading, bearing date at Columbus, Miss., on or about the fifth day of January, 1882, purporting to acknowledge the receipt from Green & Co. of two hundred bales of cotton, was thereafter presented with a draft attached to the Cocheco Manufacturing Company as alleged in the complaint, such bill of lading was made by one L. Green, who is in fact "Green & Co.," and who had no authority from this defendant, or any of the railroad companies hereinbefore named, to make or issue such bill of lading.

VII. And this defendant, further answering, says that no loss, detriment, or damage was done to or sustained by the cotton described in paragraphs XI and XII of the complaint while in the actual custody of this defendant.

VIII. And this defendant, for a further and separate defense to the said first cause of action, upon information and belief, alleges that the plaintiff, Charles W. Ide, is not the real party in interest therein, but that the alleged assignment described in paragraph

XVII of the complaint, if there was any such, was without good and sufficient consideration, and made simply to vest the right of action in the said plaintiff, a citizen of New York, and that the real party in interest as to said cause of action is the said The Cocheco Manufacturing Company.

IX. And this defendant, further answering, says that it has no knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint numbered I, XIII, XIV, XV.

46 X. And the said defendant, for answer to the second cause of action in the complaint set forth, repeating each of the allegations of this answer contained in paragraphs II, III, IV, further answering, denies that the defendants above named, associated together as set forth in paragraph X of the complaint, did, between the 25th day of October, 1881, and the 19th day of November, 1881, both inclusive, at Columbus aforesaid, receive of certain persons doing business there under the firm name of Green & Co. fifteen hundred bales of cotton; or that the said defendants agreed jointly to transport and deliver said cotton to the Amoskeag Manufacturing Company at Manchester, in the State of New Hampshire; or that the defendants executed and delivered to said persons bills of lading, dated respectively October 25th, October 26th, October 29th, November 2, November 14, November 16, and November 19, all in the year 1881, as alleged in paragraph XXI of the complaint; and also denies that this defendant individually received, on said dates, at such place, from such persons, any cotton whatever, or that it agreed separately to transport and deliver any such cotton to said Amoskeag Manufacturing Company, at said Manchester, or separately executed and delivered to said Green & Co. a bill of lading for such goods, except as hereinafter admitted.

XI. And this defendant, further answering upon information and belief, says that if any bills of lading, bearing date at Columbus, Mississippi, October 25th, October 26th, October 29th, November 2, November 14, November 16, and November 19th, respectively, all in the year 1881, purporting to acknowledge the receipt from

47 "Green & Co." of cotton amounting in the aggregate to 1,500 bales, were thereafter presented to the Amoskeag Manufacturing Company, as alleged in the complaint, such bills of lading were made by one L. Green, Jr., who was "Green & Co.," and who, if he had any authority to make or issue bills of lading for the defendant companies, or any of them, was only authorized to make and issue bills of lading upon actual delivery by and receipt from the shipper of property described in the bill of lading; and this defendant, upon information and belief, says that all of said 1,500 bales of cotton actually delivered by and received from any shipper to any of the companies defendant, if there was any such, were carried to the point of destination and there delivered to the consignee or consignees thereof.

XII. And this defendant, further answering, says that no loss, detriment, or damage was done to or sustained by the cotton de-

scribed in paragraphs XX, XXI, and XXII of the complaint while in the actual custody of this defendant.

XIII. And this defendant, for a further and separate defense to the said second cause of action, upon information and belief, alleges that the plaintiff, Charles W. Ide, is not the real party in interest therein, but that the alleged assignment described in paragraph XXVII of the complaint, if there was any such, was without good and sufficient consideration, and made simply to vest the right of action in the said plaintiff, a citizen of New York; and that the real party in interest as to said cause of action is the said The Amoskeag Manufacturing Company.

48 XIV. And this defendant, further answering, says that it has no knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint numbered XIX, XXIII, XXIV, XXV, and XXVI.

XV. Wherefore this defendant demands that the complaint be dismissed as to this defendant, with costs.

STRONG & CADWALADER,
Attorneys for Defendant.

Office and post office address: 68 Wall street, New York city.

CITY AND COUNTY OF NEW YORK *ss:*

Christopher C. Baldwin, of said city, being duly sworn, says: He is president of the Louisville and Nashville Railroad Company, the defendant above named; that he has read the foregoing answer and knows the conteents thereof, and that the same is true to his own knowledge, except as to the facts therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. C. BALDWIN.

Sworn to before me, this 9th day of February, 1884.

A. W. ANDREWS,
Notary Public (20), *N. Y. C. & Co.*

49 [Endorsed:] Supreme court. Charles W. Ide against The Louisville and Nashville Railroad Company, impleaded with others. Copy. Answer. Strong & Cadwalader, att'ys for def't; office & P. O. address, 68 Wall street, New York city.

50 Supreme Court.

CHARLES W. IDE
v.
THE LOUISVILLE AND NASHVILLE R. R. CO. *et al.*

Due and timely service of a copy of the order to shew cause herein, dated Feb'y 13th, 1884, and the papers upon which it is granted is hereby admitted.

Dated N. Y., February 13, 1884.

FRANK LOOMIS,
Attorney for the Def'ts, The N. Y. C. & H. R. R. Co.

51 *Order to Show Cause.*

Supreme Court, City and County of New York.

CHARLES W. IDE
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, impleaded with others.

On the petition of the Louisville & Nashville Railroad Company, one of the defendants in the above-entitled action, verified the twelfth day of February, 1884, and the bond herewith presented, dated the twelfth day of February, 1884, and the pleadings and all other papers and proceedings herein, and on motion of Strong and Cadwalader, attorneys for said defendant—

It is ordered that the plaintiff and defendant, The New York Central & Hudson River Railroad Company, show cause at a special term of this court to be held at chambers, in the court-house in the city of New York, on the 19th day of February, 1884, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made and entered directing this suit to be removed to the circuit court of the United States to be held in and for the southern district of New York, and that this court proceed no further in said suit, and for such other and further relief as may be just. And sufficient grounds therefor appearing insa id petition, service of a copy of this order on or before the 16th day of February, 1884, shall be deemed sufficient notice of this motion.

Dated New York, February 13, 1884.

C. DONOHUE, *J.*

52 *Petition for Removal.*

Supreme Court, City and County of New York.

CHARLES W. IDE, Plaintiff,
against
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE CLEVELAND, Columbus, Cincinnati and Indianapolis Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Maine Railroad Company, The Eastern Railroad Company, The Worcester and Nashua Railroad Company, Defendants.

To the honorable the justices of the supreme court of the State of New York:

The petition of The Louisville and Nashville Railroad Company, one of the above-named defendants, respectfully shows:

That the above-entitled suit is a suit of a civil nature at law, and was commenced on the fifteenth day of November, 1883, by the above-named Charles W. Ide, as plaintiff, against your petitioner, as defendant, by the service of a summons and copy of the complaint on your petitioner; that a summons and a copy of the complaint have also been served on defendant, The New York Central and Hudson

River Railroad Company; that your petitioner is informed and believes that none of the other companies named in the sum-
53 mons have been served; that thereafter your petitioner appeared herein by Strong & Cadwalader, its attorneys, and filed a petition and bond with the clerk of said court, and made a motion to remove this cause to the United States circuit court for the southern district of New York, which motion was denied by your said court, with leave to renew the same after the service of an answer by your petitioner.

That your petitioner upon the 9th day of February, 1884, served a copy of its separate answer herein upon plaintiff's attorney; that it is informed and believes that defendant, The New York Central and Hudson River Railroad Company, has also separately answered the complaint herein, and that no other proceedings have been had in said suit. And your petitioner further says that the said plaintiff, Charles W. Ide, was at the commencement of said suit, and at all times since has been, and now is, a citizen of the State of New York, and resides at the city of Brooklyn, in said State, and that your petitioner, the said The Louisville and Nashville Railroad Company, was at the commencement of said suit, and at all times since has been, and now is, a corporation duly incorporated under the laws of the State of Kentucky, owning, controlling, and managing a railroad in said State, and a citizen of said State of Kentucky; that such suit is pending undetermined, and that there is in said suit a controversy which is wholly between citizens of different States, namely, a controversy between the plaintiff, a citizen of the State of New York, and the defendant, The Louisville and Nashville Railroad Company, your petitioner, a citizen of the State of
54 Kentucky, and which can be fully determined as between them without the presence of any of the other persons or bodies corporate made parties to said suit.

And your petitioner further says that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, the said suit being brought to recover the sum of fourteen thousand dollars and upwards.

And your petitioner further says that the said suit is not yet ready for trial; that issues have been joined therein between the plaintiff and your petitioner, and between the plaintiff and defendant, The New York Central and Hudson River Railroad Company, but that the cause has not yet been noticed for trial by any of the parties thereto, and that the same could not be tried at the present term; that no trial has been had, and that [it] is desired by your petitioner to remove the said suit from the supreme court of the State of New York to the circuit court of the United States for the southern district of New York, according to the acts of Congress in that behalf, and that your petitioner presents herewith a bond with good and sufficient surety for its entering in such circuit court on the first day of its next term or session a copy of the record in such suit, and for paying all costs that may be awarded by said circuit court if such court shall hold that such suit was wrongfully or improperly removed thereto,

and also for its appearing and entering special bail if special bail was originally required therein.

And your petitioner further offers to furnish such other or
55 further security, or do such other or further act or thing, or both, as may reasonably be required in the premises.

And your petitioner further says that no other application has been made for the removal of this suit here asked, except that hereinbefore stated, to any court or judge.

Wherefore your petitioner, pursuant to the provisions of the act of Congress in that behalf and the statutes of the United States, prays this honorable court to accept this petition and the said bond, and to proceed no further in this suit, and that the same may be removed from the said supreme court of the State of New York to the circuit court of the United States for the southern district of New York, and that your petitioner may have such other or further relief, or both, as may be just and equitable.

And your petitioner will ever pray, &c.

Dated New York, February 12th, 1884.

STRONG & CADWALADER,
Attorneys for Defendant & Petitioner, The Louisville & Nashville Railroad Co.

Office & P. O. address: No. 68 Wall street, New York city, N. Y.

CITY AND COUNTY OF NEW YORK, *ss:*

Christopher C. Baldwin, of said city, being duly sworn, doth depose and say: That he is president of the Louisville and Nashville Railroad Company, one of the defendants in the above-entitled action; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. C. BALDWIN.

Sworn to before me, this 12th day of February, 1884.

A. W. ANDREWS,
Notary Public (20), *N. Y. C. & Co.*

56 [Endorsed:] Supreme court. Charles W. Ide *vs.* The Louisville & Nashville Railroad Company, impleaded with others. Copy. Order to show cause and petition for removal. Strong & Cadwalader, att'ys for petitioners & def't, The Louisville & Nashville Railroad Co., No. 68 Wall St., N. Y. city.

57 *Notice of Trial.*

Supreme Court, County of New York.

CHARLES W. IDE, Plaintiff,
ag'st
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY & *als.*, Defendants.

Please to take notice that the issues in this action will be brought

to trial and an inquest taken therein, at a circuit court, appointed to be held in and for the county of New York, at the county court-house, in the city of New York, on the 1st Monday of March, 1884, at 10½ o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated the 11th day of February, 1884.

Yours, &c., AUSTEN G. FOX,
Attorney for Pl'ff, 69 Wall St.

To Messrs. ARMSTRONG & CADWALADER,
Attorney-for Def't, The Louisville & Nashville R. R. Co.

58 Endorsed: Supreme court. Charles W. Ide *ag'st* The Louisville & Nashville Railroad Company & *als.* Notice of trial. Austen G. Fox, att'y for pl'ff, 69 Wall St.

59 At a special term of the supreme court, held in and for the city and county of New York, at the court-house in the said city, on the 20th day of February, 1884.

Present: Hon. Charles Donohue, justice.

CHARLES W. IDE
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE CLEVELAND, COLUMBUS, CINCINNATI AND INDIANAPOLIS RAILROAD COMPANY, THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, THE BOSTON AND MAINE RAILROAD COMPANY, THE EASTERN RAILROAD COMPANY, AND THE WORCESTER AND NASHUA RAILROAD COMPANY.

A motion for an order removing the above-entitled action coming on to be heard upon an order to show cause granted by Mr. Justice Donohue, on the 13th day of February, 1884:

On reading and filing the said order to show cause, and the petition of defendant, The Louisville and Nashville Railroad Company, verified the 12th day of February, 1884, and the bond dated the same day and a copy of the complaint, and the answer of said defendant, The Louisville and Nashville Railroad Company, upon which the same was granted, and proof of the service of a
60 copy of said order, and of the papers upon which it was granted upon defendant, The New York Central and Hudson River Railroad Company, and on hearing Mr. Wickersham for the motion, and Mr. Fox for the plaintiff in opposition thereto, and it appearing to the satisfaction of this court from the motion papers that the above-entitled action is a suit of a civil nature at law; that there is therein a controversy which is wholly between citizens of different States, to wit, between the plaintiff, a citizen of the State of New York, and the defendant, The Louisville and Nashville Railroad Company, a citizen of the State of Kentucky; that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars; that issues have been joined therein, but that the cause

has not yet been noticed for trial, and has not yet been tried, and that it could not be tried at the present term of the court:

Now, on motion of Strong & Cadwalader, attorneys for the petitioner, the said The Louisville and Nashville Railroad Company, it is ordered that this court accept the said petition and bond so offered by the petitioner, and that the said cause be, and the same hereby is removed for trial into the circuit court of the United States to be held in the southern district of the State of New York, the district where said suit is pending, pursuant to the statutes of the United States, and that this court proceed no further in said suit.

C. DONOHUE, *J.*

61 [Endorsed:] Supreme court, city and county of New York. Charles W. Ide *vs.* The Louisville and Nashville Railroad Co. *et al.* Copy. Order of removal. Strong & Cadwalader, att'ys for def't, The L. & N. R. R. Co.; office & P. O. address, 68 Wall street, New York. Sir: Please take notice that within is a copy of an order made and entered herein and filed in the office of the clerk of the city and county of New York the 20th day of February, 1884. Dated N. Y., Feb'y 20, 1884. Respectfully, Strong & Cadwalader, att'ys for def't, The L. & N. R. R. Co. To ———.

62 STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original record on file in my office, and that the same is a correct transcript therefrom, and the whole of such original record.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this seventh day of March, 1884.

[L. S.] PATRICK KEENAN, *Clerk.*

Endorsed: U. S. circuit court. Filed Mar. 10, 1884. Timothy Griffith, clerk.

63 Circuit Court of the United States, Southern District of New York.

CHARLES W. IDE
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY *et al.*

This action having been commenced in the supreme court of the State of New York, and having been duly removed therefrom to this court by duly filing a petition and bond, and the due entry of an order, pursuant to the statute in such case made and provided, and defendant, The Louisville and Nashville Railroad Company, on whose petition said suit was removed, having this day duly filed with the clerk of this court a certified copy of the record of the proceedings in said action in said supreme court, and having appeared herein by Strong & Cadwalader, its attorneys:

It is ordered that this action do proceed in this court as it originally begun therein, and that the clerk enter the appearance
64 of defendant, The Louisville and Nashville R. R. Co., by Strong & Cadwalader, its attorneys.

65 Circuit Court of the United States, Southern District of New York.

CHARLES W. IDE
against
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, THE CLEVELAND, COLUMBUS, CINCINNATI AND INDIANAPOLIS RAILROAD COMPANY, THE LAKE SHORE AND MICHIGAN SOUTHERN RAILROAD COMPANY, THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, THE BOSTON AND MAINE RAILROAD COMPANY; THE EASTERN RAILROAD COMPANY, AND THE WORCESTER AND NASHUA RAILROAD COMPANY.

SIRS: Please to take notice that on the petition for removal, the pleading and proceedings herein, I shall move this court, at a stated term thereof, to be held in the court-rooms thereof, in the city of New York, on the 29th day of February, 1884, at 11 o'clock in the forenoon, for an order remanding this cause to the supreme court of the State of New York for the city and county of New York, and for such other and further relief in the premises as may be just and equitable.

66 Yours, &c., AUSTEN G. FOX,
Pl'ff's Att'y,
Who Appears in this Court only for the Purposes of this Motion.

To STRONG & CADWALADER,
Att'ys for Def'ts N. Y. C. & H. R. R. R. Co.

[Endorsed:] U. S. circuit court. Charles W. Ide against The Louisville and Nashville Railroad Company. Notice of motion. A. G. Fox, att'y for pl'ff, 69 Wall St. To Messrs. Strong & Cadwalader, att'ys for def't, L. & N. R. R. Co. U. S. circuit court. Filed May 13, 1884. Timothy Griffith, clerk.

67 At a stated term of the circuit court of the United States for the southern district of New York, held at the court-rooms thereof in the Post Office Building, in the city of New York, on the 15th day of April, 1884.

Present: Honorable William J. Wallace, circuit judge.

CHARLES W. IDE, Plaintiff,
against
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY and others, Defendants.

A motion having been made herein, on the pleadings and all the proceedings herein, to remand this cause to the supreme court of the State of New York for the county of New York, and the same having come on for argument—

Now, after hearing Austen G. Fox in support of said
68 motion, and George W. Wickersham in opposition thereto, it is—

Ordered that the said motion be, and the same is hereby, granted, and that this court proceed no further herein, and that this cause be, and the same is hereby, remanded for trial to the supreme court of the State of New York for the county of New York.

WM. J. WALLACE.

[Endorsed:] U. S. circuit court, southern dist. of N. Y. Charles W. Ide *ag'st* The Louisville and Nashville Railroad Company and others. Order. Austen G. Fox, pl'ff's att'y, 69 Wall street. U. S. circuit court. Filed Ap'l 15, 1884. Timothy Griffith, clerk.

69 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

CHARLES W. IDE

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, impleaded with others.

Know all men by these presents, that we, The Louisville and Nashville Railroad Company, as principal, and Jacob S. Rogers, as surety, are held and firmly bound unto the above-named Charles W. Ide in the sum of two hundred and fifty dollars, to be paid to the said Charles W Ide; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eighth day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above-named The Louisville and Nashville Railroad Company has prosecuted a writ of error to the circuit court of the United States for the southern district of New York from the Supreme Court of the United States to reverse an order made and entered in the above-entitled suit by the circuit court of the United States for the southern district of New York, remanding the above-entitled action to the supreme court of the State of New York:

Now, therefore, the condition of this obligation is such, that if the above-named The Louisville and Nashville Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if it shall fail to make said alleged errors good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

LOUISVILLE & NASHVILLE RAILROAD CO.,

[SEAL.] By C. C. BALDWIN, *President.*

J. S. ROGERS. [L. S.]

Sealed and delivered, and taken and acknowledged, this eighth day of May, 1884, before me—

G. F. BUTTERWORTH,
Notary Public in and for the City and County of New York.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } *ss:*

I certify that on this eighth day of May, in the year one thousand eight hundred and eighty-four, before me personally came and appeared Christopher C. Baldwin, with whom I am personally acquainted, who, being by me duly sworn, deposes and says: That he is president of the Louisville and Nashville Railroad Company, the corporation described in and which executed the foregoing instrument; that he resides in the city of New York; that he knows the corporate seal of said corporation; that the seal which is affixed to the foregoing instrument is such corporate seal; that it was affixed thereto by authority of said corporation, and that he signed his name thereto by like authority as president as aforesaid and on said last-mentioned date; also before me personally came Jacob S. Rogers, to me known, and known to me to be the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[SEAL.] G. F. BUTTERWORTH,
Notary Public in and for the City and County of New York.

70 UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Jacob S. Rogers, being duly sworn, doth depose and say: That he is worth the sum of nine hundred dollars over and above all his just debts and liabilities.

J. S. ROGERS.

Sworn to, this eighth day of May, A. D. 1884, before me—

[SEAL.] G. F. BUTTERWORTH,
Notary Public in and for the City and County of New York.

[Endorsed:] Vol. —, page —. U. S. circuit court. Charles W. Ide *vs.* The Louisville and Nashville Railroad Company *et al.* Bond for costs on error. Strong & Cadwalader, attorneys. The within bond is approved as [to] form and sufficiency of surety. Dated this 8th day of May, 1884. U. S. circuit court. Filed May 8, 1884. Timothy Griffith, clerk.

71 UNITED STATES OF AMERICA, *ss:*

To Charles W. Ide, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the seventh day of June, 1884, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the

southern district of New York, wherein you are defendant in error and The Louisville and Nashville Railroad Company is plaintiff in error, to show cause, if any there be, why the order of the said circuit court in said writ of error mentioned, remanding to the supreme court of the State of New York a suit which is in said circuit court between you as plaintiff and the said The Louisville and Nashville Railroad Company, impleaded with others, as defendant, should not be reversed and corrected, and speedy justice should not be done to the parties in that behalf.

Dated May 8th, 1884.

[SEAL] WM. J. WALLACE.

72 [Endorsed:] U. S. circuit court, southern district of New York. The Louisville and Nashville Railroad Company, plaintiff in error, *vs.* Charles W. Ide, defendant in error. Citation. Strong & Cadwalader, attorneys for p'ff in error, 68 Wall street, New York. Due and timely service of a copy of the within citation is hereby admitted. N. Y., May 9th, 1884. A. G. Fox, att'y for def't in error. U. S. circuit court. Filed May 13, 1884. Timothy Griffith, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 856. The Louisville and Nashville Railroad Company, plaintiff in error, *vs.* Charles W. Ide. Filed 6th June, 1884.

114-32

Office Supreme Court U. S.
FILED.
DEC 9 1884
JAMES H. McKENNEY.
CLERK.

EVENING POST JOB PRINTING OFFICE, N. Y.

Supreme Court of the United States,

IN ERROR TO THE CIRCUIT COURT OF THE U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Plaintiff in Error,

vs.

CHARLES W. IDE,
Defendant in Error.

No. 856.

BRIEF OF ARGUMENT FOR PLAINTIFF IN ERROR.

Statement.

This writ of error is taken to review an order of the Circuit Judge remanding this cause to the State Court.

The suit was commenced in the New York Supreme Court against the plaintiff in error, and a number of other railroad corporations, as members of a transportation company known as the "White Line," to recover damages for the non-delivery of goods alleged to have been deliv-

ered to the "White Line," and for which bills of lading were issued in the name of the "White Line." After the service of the complaint, and before answering, the plaintiff in error filed a bond and petition for removal to the U. S. Circuit Court, on the ground that there was in the suit a controversy between it and the plaintiff, citizens of different States, which could be fully determined between them without the presence of any of the other parties thereto, and moved the State Court for an order to remove said cause, which was denied, but with leave to renew after service of the answer (Record, fol. 39). A separate answer was then served (fol. 41) and filed, with a new bond and petition, and a motion made for a removal upon the grounds that a separate controversy was disclosed by the pleadings between the plaintiff and the Louisville and Nashville Railroad Company, citizens of different States, which could be fully determined as between them without the presence of any of the other parties to the suit, whereupon the State Court approved the bond, and granted the order, and the cause was duly removed to the Circuit Court (fol. 60). Subsequently, on motion of the defendant, an order was made by the Circuit Court remanding the suit to the State Court (fol. 68), to review which order this writ is taken (fol. 71).

Argument.

The question turns upon the construction to be given to the second subdivision of section 2 of the Act of March 3, 1875; and whether there is in the suit a controversy wholly between citizens of different States, which can be fully determined as between them without the presence of other parties, within the meaning of that act.

§ 2 of the act, reads as follows :

"And when in any suit mentioned in this section there "shall be a controversy which is wholly between citizens

" of different States, and which can be fully determined
" as between them, then either one or more of the plain-
" tiffs or defendants actually interested in such contro-
" versy may remove such suit into the Circuit Court of
" the United States for the proper district."
18 Stat. L. 470.

A "controversy" in a suit, wholly between citizens of different States, which can be fully determined as between them, may arise in several ways: The suit may contain separate and independent causes of action, to each of which there is a different defendant or set of defendants, united because connected with the same subject of action, or growing out of the same transaction, or for some similar reason; or, where in an action for a tort, to the commission of which several persons were parties, who are all defendants—a tort being joint and several in its nature—separate controversies exist between the plaintiff and each of the defendants, each of which can be fully determined by itself without affecting the others; or, where in an action against several persons on a contract, distinct issues are so framed between the plaintiff and different defendants that the plaintiff might be defeated as to one or more without affecting the right to recover on the others. Such issues are "controversies wholly between" the particular parties thereto. Wherever there may be a decision of the particular issue in question, without prejudice to the other issues in the suit, such issue is a separate controversy. The word "controversy," used in the act, is broad enough to admit of this interpretation.

These views have been sustained in the Seventh and Eighth Circuits in the cases of

Sweet *v.* Chicago, M. & St. P. Ry. Co. *et al.*, 11 Fed. Rep., 355. (C. C. for the D. of Minn. by Blodgett, D. J.)

And Kerling *v.* Cotshausen, 16 Fed. Rep., 705. (C. C. for the N. D. of Ills., by Drummond, Circ. J., Mr. Justice Harlan and Blodgett, D. J., concurring.)

Both of which cases were actions in tort.

Different interpretations have been adopted in the Second and Eighth Circuits in

Boyd *v.* Gill and other cases, 19 Fed. Rep., 145. (S. D. of N. Y., by Wallace, Circ. J. and Brown, D. J.)

And Tuedt *v.* Carson, 13 Fed. Rep., 333. (C. C., Dist. Minn., by Treat, D. J.)

In these latter cases it was held, that although the causes of action were such that the plaintiff might have proceeded against the defendants separately, if in point of fact he elected to sue *all*, the controversies were not "separate" within the meaning of the statute.

"The controversy," says Judge Wallace in Boyd *vs.* Gill, "is the claim in form and substance as it is presented for determination, and if a joint recovery against several defendants is claimed, upon a cause of action which justifies a joint recovery, the controversy is between the plaintiff and all the defendants against whom the claim is asserted."

The Court in Boyd *vs.* Gill, cited and relied upon, in support of its position, the case of Hyde *v.* Ruble, 104 U. S., 407, in which the Chief Justice, delivering the opinion of the Court, expressed his opinion, that to entitle the party to a removal under the clause in question, "there must exist in the suit a separate and distinct *cause of action*, in respect to which all the necessary parties on one side are citizens of different States from those on the other;" and added: "the issues made by the pleadings do not create separate controversies, but only show the questions which are in dispute between the parties as to their one controversy."

Hyde *vs.* Ruble was a suit against defendants as copartners, on a contract of bailment. One of the defendants, Rowell, answered separately, denying the existence of the partnership; the other defendants, who were non-residents, united in an answer, also denying any partnership with Rowell. All of the defendants then united in a petition to remove the cause, which was afterwards remanded. One year later, another petition was filed by the non-residents alone, for the removal of the suit as to themselves, on the

ground that there could be a final determination of the controversy, so far as it concerned them, without the presence of Rowell as a party. It was admitted that this petition was not filed in time to effect a removal under the second clause of the second section of the Act of March 3, 1875 (p. 403); but the State Court, under the second clause of section 639, U. S. Revised Statutes, ordered a removal. The Supreme Court held that the second clause of section 639, U. S. Revised Statutes, was repealed by the Act of 1875, and that, as the second petition for removal was not filed in time under the Act of 1875, it was of no avail. As to the first petition, the Court held that it was insufficient under the first clause of section 2, Act of March 3, 1875, because all of the parties on one side were not citizens of different States from those on the other. This disposed of the whole question; and the subsequent consideration of the requirements under subdivision 2 of that section was unnecessary, as the first petition did not pray for a removal on the ground that a separate controversy between citizens of different States existed in the suit, nor show that such was the case. The language of the Chief Justice above quoted was therefore not necessary to the decision of the case, and is in direct conflict with the opinion sanctioned by Mr. Justice Harlan in Kerling *vs.* Cotzhausen, *supra.* * We may therefore consider the question as an

* Moreover, it was qualified in Fraser *v.* Jennison, 106 U. S., 191, where the Chief Justice, referring to the decision in Hyde *v.* Ruble, adds (at p. 194): "To say the least, the case must be one capable of separation into parts, so that in one of the parts a controversy will be presented, with citizens of one or more States on one side and citizens of other States on the other, which can be fully determined without the presence of any of the other parties to the suit, as it has been begun."

upon them. The claim which a plaintiff advances in his complaint is merely his *contention*. There can be no *controversy* until issues are joined; and where two or more defendants in a suit answer separately and raise issues between themselves and the plaintiff, determinable sepa-

rately, and without affecting the issues between the other parties, they constitute "controversies wholly between" the particular parties thereto.

In Gaines *v.* Fuentes, 98 U. S., 10, the Court, in construing the Act of March 2, 1867, which provided for the removal of suits in which there should be a "controversy" between citizens of different States, upon an affidavit of local predjudice, held that the "controversy" was "the question as it was presented by the *pleadings* for judicial determination."

In Chicago, St. L., & N. O. R. R. Co. *v.* McComb et al., 17 Blatch. C. C. R,, 371, Judge Blatchford said the "controversy must be judged of by the pleadings, if any, which had been put in in the State Court, prior to the filing of the petition of removal." And this decision has recently been followed by Mr. Justice Gray in Hazard *v.* Robinson, 21 Fed. Rep., 193. And the Supreme Court of Alabama has recently held: "The controversy is the dispute between the parties, to be ascertained by an inquiry as to what is asserted and denied."

Ex parte Andrews, 40 Ala., 639.

The rule announced by Circuit Judge Wallace and sanctioned *sub modo* by the Chief Justice, that although the plaintiff in an action might have proceeded against the defendant separately, if in point of fact he elects to sue at all, the controversies are not "separate" within the meaning of the Statute, and that the "controversy" is the claim in form and substance as the plaintiff presents it, has its foundation in the common law principle that a plaintiff must recover in such form, and that in an action on an alleged joint contract, plaintiff must recover against all of the defendants in the action, or not at all.

But this rule has been abolished in the State of New York, whose Code of Civil Procedure, Section 1204, provides that:

"Judgment may be given for or against one or more plaintiffs, and for or against one or more defendants;" under which it has been held, that where several are made defendants, as upon a joint contract, and it appears that

only a portion of them made the contract, plaintiff may recover against such as are in fact liable.

Brimskill *v.* James, 11 N. Y., 294.
Baker *v.* Cocks, 50 N. Y., 689.
McIntosh *v.* Ensign, 28 N. Y., 169.

In the last case, the complaint was against five defendants as common carriers, and the proof tended to establish a cause of action against two of them, and there was no proof whatever that the other three were liable, jointly or otherwise. It was held that although the plaintiff had joined with the two liable others against whom no liability was shown, there was no error in the refusal of the Court on the request of the two to direct judgment in their favor on that ground.

The reason for the rule having ceased to exist in New York, the rule itself should be abolished as to cases arising in that State. In States where the common law rule is still in force, it may perhaps still be properly held that the "controversy" in the suit is "the claim in form and substance as the plaintiff presents it," but to extend such a doctrine to cases arising in States where the rule has been abolished, would be unjust, and contrary to the spirit of the act to conform the practice, pleadings and forms and modes of proceedings in Federal Courts as near as may be to those existing in the Courts of Record of the State within which such Courts may be held.

U. S. Rev. Stats., Sec. 914.

Cessante ratione cessat et ipsa lex.

II.

The plaintiff in this action seeks to recover damages against a common carrier for neglect of duty, in not delivering goods within a reasonable time. The gist of the action is neglect of duty and damages for the loss or conversion, *i. e.*, *tort* (Record, pp. 2-3).

In actions against common carriers, it is competent to sue in tort or in contract, and at times it is somewhat difficult to determine in which form the action is brought. In this case the complaint alleges the delivery of certain cotton to a number of carriers, said to be "associated together" (Complaint, Par. X., p. 3), which the defendants agreed to transport and deliver, and which it thereupon became the duty of defendants to transport and deliver" (Complaint, Par. XI., p. 4); that the consignee of the goods has "assigned all claim for damages for the failure and neglect to deliver the said cotton" (Complaint, Par. XVII., p. 4). All this clearly discloses a claim against the defendants for neglect of duty, which is a tort.

In Catlin *vs.* Adirondack Co., 81 N. Y., R. 639, reported more fully in 11th Abbott's New Cases, 377, Potter, *J.*, whose opinion was adopted by the Court of Appeals, held, that an allegation of neglect of duty is a declaration in tort. See also

Pozzi *vs.* Shipton, 8 Ad. & E., 963.
Ferguson *vs.* Young, 9 C 1. & Finn., 257.
Bank of Orange *vs.* Brown, 3 Wendell, 158.

The gist of this whole action, as disclosed by the complaint, is the neglect of the duty of the defendants to deliver within a reasonable time; and for that reason judgment is demanded for the value of the goods.

III.

It was contended, however, on the argument below, and will be claimed here, that the complaint is framed on contract and not in tort. Granting this for the purpose of the argument, the right to removal still exists. The pleadings disclose separate controversies between the plaintiff and the defendant, the Louisville and Nashville R. R. Co.

The complaint alleges that the defendants were associ ated together as common carriers, engaged jointly in

transportation, under the name of the "White Line," and while "so associated," they received and neglected to deliver certain cotton; that they executed a bill of lading under the name of the "White Line," and that the goods were lost (Record, pp. 3, 4, 5).

The answer (Record, p. 17) proceeds to set forth the nature of the association of these various companies, under the name of the "Central Transit Company," or "White Line," explaining the peculiar relations of these corporations to each other, on which no light had been thrown by the complaint, and showing that there was no sharing of gross earnings, but that each company furnished cars; that the rates were uniform, and that the freight moneys were divided among the different companies in proportion to the services rendered by each; and that in case of loss, the company on whose road the loss occurred assumed it; or in case the loss could not be located, all the companies over whose road the goods must have passed to their destination prorated to meet it (Answer, Par. IV., p. 18).

All this makes no partnership, and each party is liable for the delivery of goods shipped, severally and individually.

The case of Insurance Co. *v.* Railroad Co., 104 U. S. 146, is on all fours with this. It was there held that relations existing between different transportation companies, such as those set up here, did not create a joint liability or establish a partnership between them, but that each party was liable only for loss upon its own line, and not for loss beyond it. "Such an agreement," say the Court (page 158,) "did not, in our opinion, involve joint liability upon the part of the railroad companies, nor make them partners *inter sese*, or as to third persons—the arrangement in question was one simply for convenience, both of the shipper and carrier."

Moreover, the complaint is founded on bills of lading. The answer shows that the bills of lading were issued by agents who acted for each carrier separately. [Answer, par. IV, at fol. 44, p. 19.]

There is therefore no joint liability, and the owner of

each particular section of the route is bound for transportation over its own section only.

Citizens Ins. Co., *v.* Kountze Line, 10 Federal Rep., 168.

Briggs *v.* Vanderbilt, 19 Barb., 222.

The answer further shows that in all bills of lading issued by the associated companies it was provided that in case of any damage or loss, that company should alone be held answerable therefor in whose possession the property should be at the time of the loss, [Answer, par. IV. fol., 44, p. 19,] and then denies that the property described in the complaint was lost or damaged while in the possession of the plaintiff in error. [Answer, par. VII, p. 19.] To these allegations of new matter, the plaintiff made no reply.

In these respects the allegations of the answer merely supplement those of the complaint. The complaint alleges that the defendants were "associated together;" the answer explains the nature of the association, and shows that it is such an association as this Court has decided does not constitute a partnership in any sense; the complaint alleges that while "*so associated*" the defendants issued bills of lading. The answer shows that the bills of lading issued by the defendant companies "while so associated," were issued by agents who represented the component companies separately and not jointly, and moreover, that all bills of lading so issued, provided that that company alone should be liable for loss or damage to the goods receipted for, in whose possession the same should be at the time such loss or damage occurred. In other words, the answer showed that while the plaintiff might show himself entitled to a judgment against one or more of the defendants, he could in no event recover against them jointly.

There are therefore presented distinct controversies in the suit. That between the plaintiff and the defendant, the Louisville and Nashville Railroad Company, can be fully determined without the presence of any other parties.

The Constitution of the United States conferred upon the Federal Courts jurisdiction of "controversies" between citizens of different States. The acts of Congress have conferred upon the citizen of one State, who is sued in the Courts of another State, the right to remove the suit into the Federal Court. This is a right the importance of which cannot be overestimated, and which should not be refined away.

A recent writer has well said: "One of the principal reasons for the establishment of the Federal Judiciary was that Courts might be provided under national authority in which citizens of different States could settle their controversies, and not be forced into the tribunals of the State of one of the litigants. The reasons which existed at the time the Constitution was adopted for providing such a tribunal exist in all their force still. Local prejudice is just as strong, and the influence of it on local tribunals is just as strong as in 1787. * * * Instead of shortening or decreasing the jurisdiction of the Federal Courts, the Courts themselves should be increased in number so that the full benefit of the constitutional right should be given to the people."

If the construction contended for by the defendant in error should be adopted by this Court, a defendant can henceforth be dragged into the Courts of a State, remote from his residence, and deprived of the impartial trial which the statute intended to secure, especially where a foreign corporation is defendant, by the simple device of joining a resident of the plaintiff's State as a party defendant, and demanding judgment against all of the defendants jointly, even though the plaintiff can, in no event, possibly recover a judgment against them in such form.

In the present case there are seven corporations defendants, only one of which is of New York. That the causes of action were assigned to a citizen of that State to deprive the Federal Courts of jurisdiction is alleged in the answer. Of these defendants only two have been served with process. It is essentially a case which should be tried in the Federal Courts. The statute is broad enough to justify

its removal. We submit that this Court should not deprive a defendant of such an important right by adopting the narrowest possible construction of the statute, and that the order remanding the cause should be re-reversed.

JOHN L. CADWALADER,
Of Counsel for Plaintiff in Error.

EVENING POST JOB PRINTING OFFICE—N. Y.

SUPREME COURT U. S.
FILED
OCT 22 1884
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Plaintiff in Error,

vs.

CHARLES W. IDE,
Defendant in Error.

No. 856.

Points for Defendant in Error.

Statement of Facts.

The writ of error is taken to review an order of the Circuit Judge in remanding this cause to the State Court.

A statement of the nature of the action will disclose, at once, the grounds on which the Court below acted, for the complaint is in *assumpsit* against several defendants *jointly*, and one of the defendants is a citizen of the same State with the plaintiff.

The action was brought by the defendant in error against the plaintiff in error and several other railroad companies

to recover damages for the breach of several joint contracts to carry certain cotton from Columbus, Mississippi, to certain places in New England. The plaintiff in the action, the defendant in error here, is a citizen of New York (fol. 15), as is also one of the parties to the alleged joint contract of carriage, The New York Central and Hudson River Railroad Company (fols. 5–42).

The plaintiff sets forth in his complaint that the defendants "associated themselves together for the transporta-"tion, jointly, of goods from places on or near the Missis-"sippi River to places on or near the Atlantic coast" (fol. 6).

He then states that the defendants received certain bales of cotton at Columbus, Mississippi, "which, *in con-"sideration* of a certain *rate* of *freight* to be paid there-"for, * * the defendants *agreed, jointly*, to transport and "deliver," to the plaintiff's assignor, and that it "*there-"upon* became the duty of the defendants to transport, "and within a reasonable time thereafter, to deliver, said "cotton as aforesaid" (fol. 7), no specific time having been stated in the contracts of carriage.

He then alleges the failure of the defendants to deliver some of the cotton (fols. 8–11).

There are several causes of action, but they are stated alike.

The defendant, the Louisville and Nashville Railroad Company, plaintiff in error here, answered the complaint, pleading *non assumpsit* (fols. 41–8).

"It admits that "a number of incorporated railroad "companies, including the defendants named in the sum-"mons in this action, and others not named therein, en-"tered into an agreement * * * to carry on a fast freight "line between cities in the eastern and in the western "parts of the country * * * under the name of 'The "Central Transit Company'" (fol. 42).

It then denies that it received, or agreed separately or jointly with others to carry the cotton, as set forth in the complaint.

The defendant, The New York Central and Hudson River Railroad Company, has answered (fols. 53–4), but the record does not contain a copy of the answer.

POSITION OF THE DEFENDANT IN ERROR.

First.

Inasmuch as the right to remove the cause depends upon the existence of "a controversy which is wholly between "citizens of different States, and which can be fully de- "termined as between them," and since the burden is on the plaintiff in error to show the existence of such a separate controversy, he fails to do so, on this record, for, in the absence of the answer of the other defendant, the Court cannot determine whether there is such a controversy or not, since, if that answer were before the Court, it might turn out to be substantially the same answer as that filed by the plaintiff in error, and disclose only a single controversy.

Second.

The action is in contract, the pleadings in which disclose but a single controversy, and since that controversy is as to the existence and breach of several joint contracts, each of which is alleged to be a joint contract between all the defendants below and the plaintiff's assignors, the Court cannot, on this preliminary motion, determine conclusively that the plaintiff may not, on the trial, establish a joint liability on the part of all the defendants, and, in any view, the Court cannot determine conclusively that there is no controversy as to such joint liability.

Third.

But, even if it should be held that this action is in tort, still the plaintiff in error must fail, since there is but one controversy, and that is a joint controversy, between the defendant in error and the various railroad companies, defendants below, and the Court will not adopt a construction of the act that would cover cases over which it is doubtful whether the judicial power of the United States extends.

FIRST POINT.

The order should be affirmed, because the right to remove the cause depends upon the existence of "a con- "troversy which is wholly between citizens of differ- "States, and which can be fully determined as be- "tween them," and since the burden is on the plaintiff in error to show the existence of such a separate controversy, he fails to do so on this record, for, in the absence of the answer of the other defendant, the Court cannot determine whether there is such a controversy or not.

FIRST.—It is conceded that the right to remove the cause depends upon there being such a controversy, the existence of which the plaintiff in error is bound to establish.

SECOND.—But it is only from all the pleadings that the Court can determine whether there is such a controversy or not.

This appears from the argument of the counsel for the plaintiff in error in this very cause.

He says (pp. 5, 6 of his Brief): "There can be no "*controversy* until issues are joined; and where two "or more defendants in a suit answer separately and "raise issues between themselves and the plaintiff, "determinable separately, and without affecting the "issues between the other parties, they constitute con- "troversies wholly between the particular parties "thereto."

But there is absolutely nothing from which the Court can determine whether there is a separate controversy here, for it does not appear that the controversy between the defendant in error and the New York Central and Hudson River Railroad Company

is different from the controversy between him and the plaintiff in error.

The plaintiff in error sets forth the substance of certain supposed bills of lading, and cites authorities to show that under *such* bills of lading and the contract alleged to exist between the various railroad companies, defendants, the latter are not liable as partners.

But under the Code of Procedure of New York (§§ 516, 522), all the allegations of the answer are taken as *denied*, unless a reply is *required*, and, moreover, the defendants may be liable on a joint contract without being partners.

Therefore, there is nothing in the record from which it can be said that there is more than the one controversy between the defendant in error and all the defendants below, growing out of the alleged breach of the alleged joint contracts.

SECOND POINT.

The order should be affirmed, because this action is in contract, and the pleadings disclose but a single controversy, and that controversy is as to the existence of certain joint contracts, each of which is alleged to have been made between the plaintiff's assignors and all the defendants below, one of the latter being a citizen of the same State as the plaintiff.

First.—The action is in contract, and not in tort.

The allegation of the contract is (fol. 7), that the defendants, at Columbus, on a given day, "received "of certain persons doing business there under the "firm name of Green & Co., two hundred bales of "cotton which, in consideration of a certain rate of "freight to be paid therefor by the said The Cocheco "Manufacturing Company, the defendants agreed,

" jointly, to transport and deliver to the said The " Cocheco Manufacturing Company, at Dover, afore- " said, and it thereupon became the duty of the de- " fendants to transport, and, within a reasonable " time thereafter, to deliver, said cotton as aforesaid."

There follow allegations that the defendants issued, thereupon, a bill of lading, acknowledging the receipt of the cotton to be transported and delivered as aforesaid, and their failure to perform the said contract.

The allegation in regard to the duty of the defendants refers to the duty growing out of the *contract*, not to the duty arising on the custom of the realm, and the duty alleged is to transport and deliver *within a reasonable time*, no time being specified in the contract. The complaint is clearly *in assumpsit*, and contains no allegation of any wrongful or tortious act. The plaintiff below alleges the existence of special contracts, and relies on the bills of lading, the terms of which are not before the Court, to show the contracts.

The action is not even for unliquidated damages, but for the value of the cotton.

But forms of action are abolished in New York, and whether this complaint states an action in *assumpsit* or in *case*, the action is plainly *ex contractu* and not *ex delicto*.

In L. R., 8 C. P. 346, Baylis *v.* Linton, it was alleged that the defendant " promised to convey " the plaintiff, yet the defendant, not " regarding " his duty " as proprietor of a hackney carriage, or his said promise, " so carelessly and negligently behaved " and conducted himself that, by and through the " mere carelessness, negligence and improper conduct " of the defendant, part of plaintiff's said baggage " became and was wholly lost."

Honyman, *J.*, said: " The duty is alleged as pro- " ceeding from the contract between the parties."

In 2 B. & P. (N. R.), 365, Powell *v.* Layton, it was held, that the declaration was in *assumpsit*, although the word *suscepit* was not used.

Sir James Mansfield, *C. J.*, said:

"The word 'duty' is introduced into this declara-
"tion, but let us see what is meant by the defend-
"ant's duty? How did he undertake any duty, ex-
"cept by his agreement to carry and deliver goods?"

In 2 Chitty on Plead. (16th Am. Ed. by Perkins), 487, it is said: "The leading distinction between contract
"and tort as regards carriers is, that in contract a
"*promise* to perform the duty required by the express,
"or implied contract of the parties is laid in the
"declaration. In tort, the declaration does not charge
"the promise, but after stating the delivery to the de-
"fendant, as a common carrier, alleges the breach of
"duty as in contract."

Citing 102 Mass., 552 Medfield *v.* B. H. & E. R. R. Co.

In 11 Abb. N. C., 379, Catlin *v.* Adirondack Co., Potter, *J.*, held that the allegations of a contract to carry for a consideration, showed that the action was upon contract while in an action in tort, "the essen-
"tial allegations of the complaint are that defendant
"was a common carrier, the custom appertaining
"thereto, and his duty as such, the loss of goods
"through defendant's negligence or conversion, and
"the damages sustained by plaintiff by reason of the
"loss of his goods."

This decision, reversed by the Court at General Term, was sustained by the Court of Appeals (81 N. Y., 639).

In 104 U. S. 407, Hyde *v.* Ruble, the action was brought upon an alleged contract of bailment, but the complaint contained allegations of a wrongful conversion.

The Court held that the action was "clearly sound-
"ing in contract, and not in tort."

See also 59 N. Y., 156, Graves *v.* Waite.

In 1 Wils. 281, Dale *v.* Hall, *J.*, said : "In the old "forms it was that the defendant *suscepit*, which "shows that it was *ex contractu*."

In 8 N. Y., 439, Campbell *v.* Perkins, it was held that a claim against a carrier for the loss of goods, was a claim arising upon contract.

In 8 A. & E. 963 Pozzi *v.* Shipton, cited by plaintiff in error, the declaration follows the form given in 2 Chitty, 457, *supra*, for an action in tort, and states no promise, but merely a delivery of the goods to be carried and delivered, for certain reasonable reward, adding the duty of the defendants in that behalf, and alleging that the defendants "not regarding their "duty in that behalf, but contriving and fraudulently "intending to deceive and injure the plaintiff in that "behalf," took such bad care of the goods, and so negligently conducted themselves in the premises, that the goods were damaged,

But there was some doubt whether even that declaration was not in contract.

The decision in 21 Fed. Rep. 896 Whittenton Mfg. Co. *v.* M. & O. R. P. Co., is not an authority to show that the complaint is in tort. In that case the question arose on demurrer, and the declaration was bad in contract, and good in tort.

The decision (p. 902), proceeded partly at least, upon the theory that, if the declaration was ambiguous, the plaintiff, on demurrer, was entitled to have the declaration construed so as to uphold it.

SECOND.—The pleadings disclose but a single controversy, and that controversy is as to the existence of certain joint contracts alleged to have been made between *all* the defendants below and the plaintiff's assignors.

104 U. S., 407, Hyde *v.* Ruble.

In that case, the plaintiff alleged a joint liability, arising on a joint contract of bailment, and the defendants answered separately.

One of them denied any partnership with the other defendants, and set up performance of the contract.

The other defendants denied any partnership with the first defendant, or *any* contract with the plaintiff, so that there was more reason in that case than in this for claiming that there *was* a separate controversy; for, in that case, some of defendants denied the existence of a contract, which the other defendants admitted. But the Court said:

> " The suit, then, as it stands in the complaint, is in " respect to a controversy between the parties as to " the liability of the defendants on a single contract. " * * * * The issues made by the pleadings do not " create separate controversies, but only show the " questions which are in dispute between the parties " as to their one controversy."

THIRD.—But as the action is on a joint contract, and one of the defendants is a citizen of the same State as the plaintiff, the action cannot be removed to the Federal Court.

103 U. S., 336, Blake *v.* McKim.
104 *id.*, 407, Hyde *v.* Ruble.
105 *id.*, 576, Corbin *v.* Van Brunt.
106 *id.*, 191, Fraser *v.* Jennison.
108 *id.*, 130, Winchester *v.* Loud.
112 *id.*, 187, Ayres *v.* Wiswall.

In Corbin *v.* Van Brunt, *supra*, it was said: " In " no just sense can it be said that the pleadings pres- " sent separate controversies, such as admit of separate " and distinct trials. If they do not, there could be " no removal under the second clause of the Act of " March 3, 1875, c. 137, any more than under the " first."

It is to be noted that the plaintiff in error fails to point out any separate controversy here which would admit of a separate and distinct trial.

In Fraser *v.* Jennison, *supra*, it was held that in order to justify a removal there must be a separate controversy " which can be fully determined without " the presence of any of the other parties to the suit " *as it has been begun.*"

The language of the Act of Congress is: " When, *in any suit*, * * there shall be a controversy," not when there shall be a controversy which might form the basis of another suit. It is the *suit* as it has been begun, not as it might have been begun, that is the test, and when the complaint alleges a joint contract the controversy is none the less a single controversy, because the law now permits a recovery against only one of several alleged joint debtors.

In 112 U. S., 187, Ayres *v.* Wiswall, the Court said: " If the claim of the complainant is sustained, the " decree will be against all the defendants. In order " that the complainants may get all the relief they " ask, and which, upon their showing in the bill they " are entitled to, Wiswall is a necessary and substan- " tial party to the suit, and on the opposite side from " them. * * There is here but one cause of action. " * * * The fact that separate answers were filed " which raised separate issues in defending against " the one cause of action, does not create separate " controversies within the meaning of that term as " used in the statute. They simply present different " questions to be settled in determining the rights of " the parties in respect to the one cause of action for " which the suit was brought."

Citing Hyde *v.* Ruble, 104 U. S., 407.
Winchester *v.* Loud, 108 U. S., 130.
Shainwald *v.* Lewis, 108 U. S., 158.

If the defendants are entitled to remove this action, then any action on a joint contract may be removed by a non-resident defendant, who sets up facts which he claims tend to show that he is liable only severally, notwithstanding the plaintiff's sworn allegations of a joint contract and the provisions of the Code, that the allegations in the answer are taken as denied.

In short, a mere denial of joint liability, does not show that there is no such liability. It does show, however, that there *is* a controversy, and a single controversy between the plaintiff and all the defendants as to this joint liability. There is no other controversy in the pleadings.

FOURTH.—It is not enough that there is a controversy between the defendant in error and the plaintiff in error.

In 11 Biss., 328, Price *v.* Foreman, Harlan, *J.*, said: "The issue made is will or no will. * * There is, "it is true, *a* controversy between the two foreign "corporations and the complainant, but obviously it "is not a controversy in which those parties alone are "concerned, and which can fully be determined as "between them, without the presence of the other "defendants in their capacity as trustees for com- "plainant."

Affirmed, 110 U. S., 61.

See also 22 Fed. Rep., 3 Wilson *v.* St. L. & S. F. R. R. Co.

FIFTH.—This Court cannot, on a mere preliminary motion, determine conclusively that the plaintiff may not establish, at the trial, a joint liability on the part of all the defendants.

This is the very issue to be tried.

The allegations in the answer of the plaintiff in error are all to be taken as denied, since no reply has been required (N. Y. Code Proc., §§ 516, 522).

But, at any rate, they are not conclusive against, any more than the allegations of a joint contract in the complaint are conclusive in favor of such a contract.

THIRD POINT.

Even if this action should be held to be an action in tort against the plaintiff in error jointly with the other defendants below, the action would not have been removable to the Federal Court.

13 Blatch., 395, Petterson *v.* Chapman, cited 14 *id.*, 542.
21 *id.*, 453, Boyd *v.* Gill.
13 Fed. Rep., 353, Tuedt *v.* Carson.

The right of removal exists only, "When *in any* "*suit* * * * there shall be a controversy which "is wholly between citizens of different States, and "which can be fully determined between them."

It is not, therefore, when there is a controversy which *might* have been presented in *another* suit, but only when there is a separate controversy in the suit as *brought*, and as it *exists*, that the right of removal exists.

In Boyd *v.* Gill, *supra*, it was said: "The contro- "versy is the claim in form and substance, as it is "presented for determination; and if a joint recovery "against several defendants is claimed upon a cause "of action which justifies a joint recovery, the con- "troversy is between the plaintiff and all the defend- "ants against whom the claim is asserted."

In Petterson *v.* Chapman, *supra*, the action was brought to recover damages for the conversion of the plaintiff's securities, and Johnson, *J.*, said, that the accepted construction of the various removal acts did "not appear to rest so much upon the particular words "employed in the several statutes, as upon the accept- "ance of the general idea, that when jurisdiction de- "pends upon citizenship, the fact that it exists as to "one person does not in the least afford a foundation "for asserting it over another. * * * It is sug-

" gested that the nature of the claim, being for a con-
" version of personal property, and therefore main-
" tainable against either defendant, is material. But
" to this it must be answered that the plaintiffs have
" the election to proceed in the same suit against all
" the defendants. * * * The case discloses but a
" single controversy, and that can be fully determined
" only between all the parties (2 Sumner, 338, Smith
" *v.* Rines)."

In 2 Sumn., 338, Smith *vs.* Rines, *supra*, the action was *ex delicto*, and one of the defendants sought to remove the cause.

Story, *J.*, said: "But, assuming it to be true that
" the tort stated in this action is several, as well as
" joint, still it does not advance the argument at all,
" unless it can be established that the defendant has a
" right to elect to consider it several, and also that the
" defendant has no joint interest in the suit. * * *
" There is no principle upon which the defendant has
" a right in any Court of justice to say that the action
" shall be several, and not joint; and thus to take
" away the right of election, which the plaintiff has
" by law to make it joint. * * * And then again,
" if the tort is several, it is also joint; and when the
" plaintiff has joined all the wrong-doers, it is clear
" that they have a joint interest in the event of such
" suit. * * * If a party has a distinct and separate
" interest, and also a joint interest, as where he is sued
" upon his joint and several bond, it has never been
" supposed that the general rule laid down in that case
" (3 Cranch, 267, Strawbridge *vs.* Curtis) did not
" apply."

In the two cases cited by the plaintiff in error holding a contrary doctrine, the foregoing decisions do not appear to have been brought to the attention of the Court.

This Court will not adopt a construction of the Act of 1875 that would include actions against joint tort